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HOUSE BILL NO. 2036

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 2.1-155, 9-385, 46.2-623, 58.1-320, 58.1-540, 58.1-544, 58.1-545, 58.1-548, 58.1-611.1, and 58.1-3912 of the Code of Virginia; to amend the Code of Virginia by adding in Article 5 of Chapter 36 of Title 58.1 a section numbered 58.1-3667; and to repeal §§ 15.2-1636.20, 58.1-542, 58.1-543, 58.1-549, and 58.1-3916.01 and Chapter 35.1 of Title 58.1 of the Code of Virginia, relating to state and local income taxes.

Patron—Rust

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-155, 9-385, 46.2-623, 58.1-320, 58.1-540, 58.1-544, 58.1-545, 58.1-548, 58.1-611.1, and 58.1-3912 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 36 of Title 58.1 a section numbered 58.1-3667 as follows:

§ 2.1-155. Duties and powers generally.

The Auditor of Public Accounts shall audit all the accounts of every state department, officer, board, commission, institution or other agency in any manner handling state funds. In the performance of such duties and the exercise of such powers he may employ the services of certified public accountants, provided the cost thereof shall not exceed such sums as may be available out of the appropriation provided by law for the conduct of his office. ~~As part of his normal oversight responsibilities, the Auditor of Public Accounts shall incorporate into his audit procedures and processes a review process to ensure that the Commonwealth's payments for qualifying vehicles, as defined in § 58.1-3523, are consistent with the provisions of §§ 58.1-3525 and 58.1-3526. The Auditor of Public Accounts shall report to the Governor and the Chairmen of the Senate Finance Committee annually any material failure by a locality or the Commonwealth to comply with the provisions of Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1.~~

If the Auditor of Public Accounts shall at any time discover any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or if at any time it shall come to his knowledge that any unauthorized, illegal, or unsafe handling or expenditure of state funds is contemplated but not consummated, in either case he shall forthwith lay the facts before the Governor, the Joint Legislative Audit and Review Commission and the Comptroller.

In compliance with the provisions of the federal Single Audit Act of 1984, Public Law 98-502, the Joint Legislative Audit and Review Commission may authorize the Auditor of Public Accounts to biennially audit the accounts pertaining to federal funds received by state departments, officers, boards, commissions, institutions or other agencies.

§ 9-385. Tax Credits for Technology Industries in Tobacco-Dependent Localities.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; however, starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and 58.1-439.14 and the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

INTRODUCED

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59 § 46.2-623. Statements in application.

60 A. Every application for a certificate of title shall contain (i) a statement of the applicant's title and
61 of all liens or encumbrances on the vehicle and the names and addresses of all persons having any
62 interest in the vehicle and the nature of every interest in the vehicle; (ii) the Social Security number, if
63 any, of the owner and, if the application is in the name of an employer for a business vehicle, the
64 employer's identification number assigned by the United States Internal Revenue Service; and (iii) a
65 brief description of the vehicle to be registered, including the name of the maker, the vehicle
66 identification or serial number and, when registering a new vehicle, the date of sale by the manufacturer
67 or dealer to the person first operating the vehicle.

68 B. Not later than July 15, 1998, the lessor of a ~~qualifying motor~~ vehicle, as defined in ~~§ 58.1-3523~~
69 ~~§ 58.1-3667~~, shall send a report to the Department for each such ~~qualifying motor~~ vehicle it was leasing
70 as of July 1, 1998, and has leased between January 1, 1998, and June 30, 1998, containing (i) the name
71 and address of the lessee as it appears in the lease contract; (ii) the social security number of the lessee;
72 and (iii) the registration number of the vehicle as described under Article 1 (§ 46.2-600 et seq.) of
73 Chapter 6 of Title 46.2.

74 C. Beginning with August 1998, such lessor shall send a monthly report to the Department, by the
75 fifteenth day of the month ~~or such later day as may be prescribed in the guidelines promulgated under~~
76 ~~§ 58.1-3532~~, listing any changes, additions or deletions to the information provided under subsection B
77 as of the last day of the preceding month.

78 D. The application shall contain such additional information as may be required by the Department.

79 § 58.1-320. Imposition of tax.

80 A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every
81 individual as follows:

82 ~~Two~~ *One and seven-tenths* percent on income not exceeding \$3,000;

83 ~~Three~~ *Two and six-tenths* percent on income in excess of \$3,000, but not in excess of \$5,000;

84 ~~Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning~~
85 ~~before January 1, 1987;~~

86 ~~Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning~~
87 ~~January 1, 1987, through December 31, 1987;~~

88 ~~Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning~~
89 ~~January 1, 1988, through December 31, 1988;~~

90 ~~Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning~~
91 ~~January 1, 1989, through December 31, 1989;~~

92 ~~Five~~ *Four and three-tenths* percent on income in excess of \$5,000 but not in excess of \$17,000 for
93 taxable years beginning January 1, 1990;

94 ~~Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before~~
95 ~~January 1, 1987;~~

96 ~~Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January~~
97 ~~1, 1987, through December 31, 1987;~~

98 ~~Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January~~
99 ~~1, 1988, through December 31, 1988;~~

100 ~~Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January~~
101 ~~1, 1989, through December 31, 1989; and~~

102 ~~Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and~~
103 ~~after January 1, 1990, through December 31, 2002; and~~

104 ~~Five percent on income in excess of \$17,000 for taxable years beginning on and after January 1,~~
105 ~~2003.~~

106 § 58.1-540. Levy of the tax.

107 A. Any county having a population of more than 500,000, as determined by the 1980 U. S. Census,
108 any county or city adjacent thereto, and any city contiguous to such an adjacent county or city, or any
109 city with a population of at least 265,000, or city is hereby authorized to levy a local income tax at any
110 increment of one-quarter percent up to a maximum rate of one percent upon the Virginia taxable income
111 as determined in § 58.1-322 for an individual, or in § 58.1-361 for a fiduciary of an estate or trust, or
112 ~~§ 58.1-402 for a corporation;~~ for each taxable year of every resident of such county or city or
113 corporation having income from sources within such county or city, subject to the limitations of
114 subsection B of this section as follows:

115 *Three-tenths of one percent on income not exceeding \$3,000;*

116 *Four-tenths of one percent on income in excess of \$3,000, but not in excess of \$5,000;*

117 *Seven-tenths of one percent on income in excess of \$5,000, but not in excess of \$17,000; and*

118 *Three-quarters of one percent on income in excess of \$17,000*

119 The same rate shall apply to individuals, and fiduciaries and corporations.

120 B. The authority to levy a local income tax as provided in subsection A may be exercised by a

county or city governing body only if approved in a referendum within the county or city. The referendum shall be held in accordance with § 24.2-684. The referendum may be initiated either by a resolution of the governing body of the county or city or on the filing of a petition signed by a number of registered voters of the county or city equal in number to ten percent of the number of voters registered in the county or city on January 1 of the year in which the petition is filed with the circuit court of such county or city. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the election. The ballot used shall be printed to read as follows:

"Shall the governing body of (...name of county or city...) have the authority to levy a local income tax of up to one percent for transportation purposes in accordance with § 58.1-540 of the Code of Virginia?"

Yes

No"

If the voters by a majority vote approve the authority of the local governing body to levy a local income tax, the tax may be imposed by the adoption of an ordinance by the governing body of the county or city in accordance with general or special law, and the tax may be thereafter enacted, modified or repealed as any other tax the governing body is empowered to levy subject only to the limitations herein. No ordinance levying a local income tax shall be repealed unless and until all debts or other obligations of the county or city to which such revenues are pledged or otherwise committed have been paid or provision made for payment.

§ 58.1-544. Effective date of tax; repeal thereof.

A. Any tax imposed under this article shall be effective for all taxable years beginning on or after January 1 of the year following the calendar year in which the ordinance levying the tax is adopted.

B. Subject to the limitations provided in subsection B of § 58.1-540, the repeal of any tax imposed under this section shall be effective for all taxable years beginning on or after January 1 of the year following the calendar year in which the ordinance levying the tax is repealed.

C. The local governing body shall transmit to the Tax Commissioner a certified copy of any ordinance levying, modifying or repealing the local income tax no later than thirty calendar days after its adoption and at least thirty calendar days prior to the effective date of the tax.

§ 58.1-545. Administration of tax; withholding; estimated tax.

A. Except where otherwise clearly provided in this article, any local income tax levied under § 58.1-540 shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties and other provisions as the state individual income tax, and the state income tax on fiduciaries of estates and trusts, and the state income tax on corporations imposed in this chapter, which are hereby incorporated by reference, including, without limitation, the provisions of Articles 16 (§ 58.1-460 et seq.), and 19 (§ 58.1-490 et seq.) and 20 (§ 58.1-500 et seq.) of this chapter relating generally to withholding and estimated tax.

B. The Tax Commissioner shall have the authority to promulgate regulations relating to the interpretation, administration, and enforcement of the local income tax authorized under this article, including the withholding of the tax by employers, and the payment of estimated tax, and the allocation and apportionment of a corporation's income.

C. In determining distributions of the local income tax authorized under this article, the Tax Commissioner may rely on the taxpayer's assertion of his county or city of residence on his income tax form.

§ 58.1-548. Disposition of revenues; costs of administration.

A. All local income tax revenues collected by the Tax Commissioner pursuant to this article shall be paid into the General Fund of the state treasury.

B. Such revenues shall be transferred monthly by the Comptroller to a special fund entitled "Collections of Local Income Taxes," upon certification of such amounts by the Tax Commissioner.

C. As soon as practicable after the last day of each calendar quarter, the Comptroller shall pay over and distribute to each county and city the local income tax revenues to be estimated by the Tax Commissioner. The Tax Commissioner shall reconcile such estimates during the month following the close of the fiscal year for those returns on file for the preceding taxable year.

D. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town that imposed a tax on personal property pursuant to former Chapter 35 (§ 58.1-3500 et seq.) of Title 58.1 as of January 1, 2001, the county treasurer shall pay into the town treasury for general government purposes the proper proportionate amount received by him in the ratio that the most recent payment to the town pursuant to former Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1 bears to the most recent payment to the county pursuant to former Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1.

DE. The direct costs of state administration of the local income tax as certified to the Comptroller by

the Department of Taxation shall be deducted on a prorated basis from the distributions to each county and city under subsection C of this section. In determining each county's or city's prorated share of administrative costs, the Comptroller shall apportion the total administrative costs in the ratio which the revenues of each county or city bear to the total local income tax revenues distributed. The direct costs for local administration of the local income tax shall be paid entirely from the local revenues of the county or city.

EF. All revenues distributed to a county or city under subsection C of this section shall be *used by the county or city for any lawful purpose, including, but not limited to, distributing all or any portion of such revenues to a regional transportation district for payment of all or any portion of the cost of any transportation project that has been approved by the Commonwealth Transportation Board.* applied and expended for transportation purposes; including, without limitation, construction, administration, operation, improvement, maintenance and financing of transportation facilities.

As used in this section, the term "transportation facilities" shall include all transportation related facilities including, but not limited to, all highway systems, public transportation or mass transit systems as defined in § 33.1-12, airports as defined in § 5.1-1, and port facilities as defined in § 62.1-140. Such term shall be liberally construed for purposes of this section.

Any county or city that levies a local income tax under this article shall not reduce the total amount of its annual general fund appropriations, exclusive of the revenues derived from the tax levied under this article, for transportation purposes below the total amount appropriated for those purposes in the fiscal year preceding the adoption of the ordinance levying the tax.

Revenues derived by a county or city from the local income tax levied under this article shall be in addition to those allocated to the county or city from state transportation funds, which allocations shall not be reduced as a result of any revenues received hereunder.

F. If any revenues distributed to a county or city under subsection C of this section are applied or expended for any transportation facilities under the control and jurisdiction of any state agency, board, commission or authority, such transportation facilities shall be constructed, operated, administered, improved and maintained in accordance with laws, rules, regulations, policies and procedures governing said state agency, board, commission or authority; provided, however, that in the event these revenues, or a portion thereof, are expended for improving or constructing highways in a county which is subject to the provisions of § 33.1-75.3, such expenditures shall be undertaken in the manner prescribed in that statute.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction Program.

A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall be used for general fund purposes.

3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for general fund purposes.

4. On and after April 1, 2003, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted

pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption.

D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased for human consumption for any twelve-month period beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction is contemplated in subsection A do not exceed the official general fund revenue estimates for such preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act, by at least one percent; ~~or~~

2. *The general fund revenue forecast provided by the Governor in December pursuant to § 2.1-393 indicates that general fund revenues, excluding transfers, for any fiscal year will be less than five percent greater than general fund revenues for the immediately preceding fiscal year; or*

3. *The general fund revenue forecast provided by the Governor in December pursuant to § 2.1-393 indicates that total general fund revenues available for appropriation, including transfers, for either of the fiscal years covered by the general appropriation act in effect at that time will be less than the general fund appropriations for such fiscal year or years.*

~~2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have occurred during the then current fiscal year.~~

E. If the tax rate on food purchased for human consumption remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001, or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax rate on such food shall remain the same unless none of the conditions described in subsection D have occurred, in which event the tax rate on food purchased for human consumption for the immediately following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction Program as established by this section, and as may be provided for in the general appropriation act. For the purpose of the Comptroller's preliminary and final annual reports required by § 2.1-207, all balances remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the general fund of the state treasury.

§ 58.1-3667. Motor vehicles used for nonbusiness purposes.

Pursuant to Article X, Section 6 (a) (8) of the Constitution of Virginia, motor vehicles used for nonbusiness purposes are exempt from taxation.

For purposes of this section, "motor vehicle" means any passenger car, motorcycle, and pickup or panel truck, as those terms are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § 58.1-3511 to be (i) owned by a natural person or (ii) leased by a natural person pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle. In making this determination the commissioner of revenue may rely on the registration of such vehicle with the Department of Motor Vehicles pursuant to Chapter 6 (§ 46.2-600 et seq.) of Title 46.2.

For purposes of this section "used for nonbusiness purposes" means the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than fifty percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of fifty percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

§ 58.1-3912. Treasurers to mail certain bills to taxpayers; penalties.

A. The treasurer of every city and county shall, as soon as reasonably possible in each year, but not later than fourteen days prior to the due date of the taxes, send or cause to be sent by United States mail to each taxpayer assessed with taxes and levies for that year a bill or bills setting forth the amounts due. The treasurer may elect not to send a bill amounting to twenty dollars or less as shown by an assessment book in such treasurer's office. The treasurer may employ the services of a mailing service or other vendor for fulfilling the requirements of this section. The failure of any such treasurer to comply with this section shall be a Class 4 misdemeanor. Such treasurer shall be deemed in compliance with this section as to any taxes due on real estate if, upon certification by the obligee of any note or other evidence of debt secured by a mortgage or deed of trust on such real estate that an agreement has been made with the obligor in writing within the mortgage or deed of trust instrument that such arrangements be made, he mails the bill for such taxes to the obligee thereof. Upon nonpayment of taxes by either the obligee or obligor, a past-due tax bill will be sent to the taxpayer. No governing body shall publish the name of a taxpayer in connection with a tax debt for which a bill was not sent, without first sending a

305 notice of deficiency to his last known address at least two weeks before such publication.

306 B. The governing body of any county, city or town may attach to or mail with all real estate and
307 tangible personal property tax bills, prepared for taxpayers in such locality, information indicating how
308 the tax rate charged upon such property and revenue derived therefrom is apportioned among the various
309 services and governmental functions provided by the locality.

310 C. Notwithstanding the provisions of subsection A of this section, in any county which has adopted
311 the urban county executive form of government, and in any county contiguous thereto which has
312 adopted the county executive form of government, tangible personal property tax bills shall be mailed
313 not later than thirty days prior to the due date of such taxes.

314 D. Notwithstanding the provisions of subsection A of this section, any county and town, the
315 governing bodies of which mutually agree, shall be allowed to send, to each taxpayer assessed with
316 taxes, by United States mail no later than fourteen days prior to the due date of the taxes, a single real
317 property tax bill and a single tangible personal property tax bill.

318 E. Beginning with tax year 1999, in addition to all other information currently appearing on tangible
319 personal property tax bills, each such bill shall state on its face (i) whether the vehicle is a qualifying
320 vehicle as defined in § 58.1-3523; (ii) a deduction for the amount to be paid by the Commonwealth as
321 determined by § 58.1-3524; (iii) the vehicle's registration number pursuant to § 46.2-604; (iv) the amount
322 of tangible personal property tax levied on the vehicle; and (v) if the locality prorates personal property
323 tax pursuant to § 58.1-3516, the number of months for which a bill is being sent.

324 F. Beginning with tax year 1999 and through the end of tax year 2002, the treasurer shall include a
325 statement, prepared by the Department, with or as part of the tangible personal property tax bills for
326 such qualifying vehicles. The statement shall explain how the deduction for the percentage of the
327 reimbursable amount was calculated; how the deduction shall be calculated in future years; and the
328 taxpayer's liability for tangible personal property taxes on qualifying vehicles.

329 2. That §§ 15.2-1636.20, 58.1-542, 58.1-543, 58.1-549, and 58.1-3916.01 and Chapter 35.1 of Title
330 58.1 of the Code of Virginia are repealed.

331 3. That the provisions of this act shall become effective: (i) on January 1, 2003, and (ii) only if a
332 Constitutional amendment to Article X, Section 6 of the Constitution of Virginia making motor
333 vehicles used for nonbusiness purposes exempt from taxation is ratified by a majority of voters
334 voting on such measure at the election directed by law to be held on Tuesday after the first
335 Monday in November 2002.